HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 3861 of 2001 (m/S)
(Old No. 10243 of 1995)

U.C. Chandna & another
Vs.
2nd Additional District Judge, Dehradun,
and others.

Approved for reporting.

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~~Not approved for reporting~~

Decided on 24.11.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 3861 2001 (M/S)
(Old No. 10243 of 1995)

U.C. Chandna & another ..... Petitioners

Versus

2nd Additional District Judge, Dehradun & others ..... Respondents

Dated: November 24, 2004

Hon'ble Rajesh Tandon J.

Head the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 15.3.1995 passed by the respondent no.1, annexure 13 to the writ petition.

Factual aspect of the case:

Briefly stated the facts giving rise to the present writ petition are that the petitioners are the owners of the property bearing No. 22 Rampur Mandi Road, Dehradun, One Sri Kishan Singh is the tenant in one of the shop. Respondents no.2, 3 and 4 are the heirs of Kishan Singh. A release application under section 21 (1)(a) of U.P. Act No. 13 of 1972 was moved by the petitioners for release of the shop in question on the ground that the shop is required for his son who is studying in M. B.B.S. and further that the petitioners will establish a maternity cum nursing home for their daughter namely Dr. Sujata Chandna.

The petitioners have further submitted the petitioner no.1 is a medicalpractitioner and has his clinic and dispensary at 24 Rampur Mandi Road, Dehradun, which is a rented building. In one shop petitioner is running chemist shop whereas in the other part petitioner has his clinic. The size of the shop is 25' x 22' and veranda is common.

During the pendency of the application Sri Tarun Chandna son of the petitioners had passed M.B.B.S. degree. The release application against Sri Kishan Singh was dismissed in default and the appeal filed thereupon was also dismissed becaused by that time Kishan Singh died in July 1983. Only respondent no. 6 has filed written statement and case against other heirs of Kishan Singh proceeded ex parte. The trial Court has allowed the application vide judgment and order dated 10.12.1992. Being aggrieved the respondents no.5 and 6 have filed and appeal before the District Judge and the 2nd Additional District Judge vide judgment and order dated 15.3.1995 has allowed the appeal against which the present writ petition has been filed.

About Bona fide need of the landlord:

The landlord has submitted the following averments with regard to his bona fide need. The relevant paragraphs of release application are quoted below:

5. That the applicant no.l is a medical practitioner and he has his clinic and dispensary including the retail chemist shop at 24, Rampur Mandi Road, Dehradun.

7. That the second son of the applicant is studying in medical and will also require accommodation for his profession.

Later on by way of amendment paragraph 7A was added which reads as under:

7.A That during the pendency of the case Sri Tarun Chandna second son of the applicant has passed the M.B.B.S. final examination and has become qualified to practice as doctor. The requirement for the said son of the applicant for the purpose of establishing clinic is imminent.

9. That the applicants want to establish a maternity cum nursing home for the said daughter of the applicants named Dr. Sujata Chandna.

Regarding the requirement of the tenants the petitioner have stated in their application to the following effect:

12. That all the O.P.s nos. 1, 2 and 3 are not carrying out any business in the said accommodation and they in fact do not require the said accommodation.

12.A. That the O.P. No.5 claims that late Kishan Singh died leaving a will bequeathing the tenancy rights to her. She further claims that she had become a partner with the late Sri Kishan Singh during his life time as such she had become a tenant thereof. The applicants have never recognized the said O.P. No. 5 as a tenant. The tenancy cannot be legally bequeathed by a will. The late Kishan Singh to the O.P. No.5 Further the late Kishan Singh as a tenant in the said shop in his individual capacity. The alleged partnership the existence of which is denied by the applicants never became tenant in this shop in question. The O.P. No.4 is not a legal juristic person. It was only a same and style in which late Kishan Singh. was carrying on his business. The O.P.s 4 and 5 have been impleaded as per orders of the learned court. They have no right to use the said shop as a tenant nor they are the

tenants in the said shop. Their claim for the shop in question cannot be legally considered.

In support of his case the petitioner applicant has deposed in his affidavit as under:

9. That it is reiterated that I and my family members want to establish a maternity cum nursing home for my said daughter, Dr. Sujata Chandna, her husband who is also a medical practitioner and my younger son Shri Tarun Chandna who will soon be entitled to start medical practice. Contrary contentions in para 9 of the objections of O.P. 5 are wrong and denied.

The prescribed authority has given the following findings on the point of bona fide need of the landlord.

यहॉ ऐसा कोई साक्ष्य नही है कि जिसमें डा0 तरुण चादना को कही पर व्यवस्थित होना पाया जाय। यदि वह अपने पिता डा0 यू0सी0 चादना के साथ कार्य कर भी रहा है तो उक्त व्यवस्था अल्पकालीन है इस आधार पर उसके स्वतन्त्र रूप से अस्पताल खोलने के उददेष्य को सदभावी माना जायेगा। इसके साथ ही माननीय उच्च न्यायालचय ने चन्द प्रकाष प्रति करतार सिंह व अन्य ए0 आर0सी0 78 पृष्ठ 270 के दृष्टान्त में भी यह विचार किया है कि यदि कोई भवन स्वामी अपने डा0 पुत्र के क्लीनिक के लिए किरायेदार व अध्यासन की दुकान चाहता है और उसवके पास अन्यष कोई उपयोगी स्थान नही है तो उसकी आवष्यकता सदभावी होगी।

प्रतिपक्षिनी के विद्धान अधिवक्ता ने तर्क में यह कहा कि प्रर्थिगण ने प्रार्थना पत्र व साक्ष्य में कही पर डा0 अरुण चांदना कही पर डा0 सुजाता चादना और कही पर दामाद गिरीष चन्द डाग को व्यवस्थित करने के संदर्भ में प्रष्नगत दुकान के लिए अपनी सदभावी आवष्यकता का प्रकरण रखा है।

यहॉ यह उल्लेख करना अनावष्यक न होगा कि प्रर्थीगण का प्रकरण शुरु से ही है कि वह प्रसूति गृह एवं अस्पताल प्रष्नगत सम्पत्ति में खोलना चाहते हैं। उक्त प्रतिष्ठान ऐसा है कि जिसमें पुरुष व स्त्री दोना डकतटरों की आवष्यकता पवडती है इस दशा में उपरोक्त तीनो को परस्पर विरोधी है और नही इस आधार पर यह कहा जा सकता है कि प्रार्थीगण की आवष्यकता सदभावी नही है।

The appellate Court has reversed the judgment of the prescribed authority on the following grounds:

*Thus according to the opposite parties an alternative and sufficient accommodation was available to the applicants in which they can establish their second son Dr. Taqrun Chandana. However, as far as the need of their married daughter Dr. Sujata Chanadna was concerned, it could not be considered firstly because she was not a member of his family and secondly she or her husband were not living in Dehradun but at Saharanpur.**********

In view of the may aforesaid discussion, I am of the view that the need of the applicants is neither bona fide nor genuine, therefore, there is no need to consider the factor of comparative hardship. The release application under section 21(i)(a) of U.P. Act NO. 13 of 1972 is liable to be dismissed with costs.

The counsel for the petitioner has stated that the testamentary heirs of the tenant are not included within the definition of tenant. In 1981 ARC 32 N.A. Gehani vs. Mahabir Prasad and others, in which it has been held that the word "heirs" as used in section 3(a) of Act No. 13 of 1972 would not include testamentary heirs. This word has been used in a restricted and limited sense in the context.

Further in the case Jaspal Singh vs. Addl. District Judge, Bulandshahr and others ARC 1985 (I) 1, the apex Court has held as under:

8. *This leads us to the next contention that the appellant is a tenant within the meaning of Section 3 (a) of Act 13 of 1972:*

"3. In this Act, unless the context otherwise requires-

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"3. In this Act, unless the context otherwise requires-

(a) 'tenant', in relation to a building, means a person by whom its rent is payable, and on the tenant's death-

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a non-residential building, his heirs;

The appellant would be a tenant within the meaning of Section 3(a) only when he is an heir. The appellant is not a son but only a nephew of Naubat Singh.

Allahabad High Court in 2000 (1) ARC 386 Ishwar Chand vs. ADM (Civil Supply) R.C. & E.C. Kanpur Nagar and 2000 (1) ARC 474 Rais Ahmad Siddiqui vs. Officer Authorised and another has also held that tenancy rights cannot be transferred by a will. Similar view has been taken in 1979 ARC 251 Ratan Lal vs. ADJ, Bulandshahr and others, 1982 ARC 708, Abhinandan Prasad Jain vs. District Judge, Saharanpur and 1980 ARC 519 Devendra Kumar vs. 3rd ADJ, Meerut by holding that the tenant has not right to transfer the rented property by way of gift or by way of will.

In the case of Gaya Prasad Vs. Pradeep Srivastava reported in 2001 SCFBRC 128 the Apex Court observed as under:

"2. This case present a sample scenario of the tormenting plight of an average litigant, who approaches the Court with all expectations of getting relief for his urgent need. But the snail paced litigation creeping through all the tires of the judicial hierarchical forums would have frustrated all his expectations, though others could admire the tenacity with which her

persisted with the cause. Twenty-three years ago, the litigant in this case wanted accommodation for his son, who then became a medical graduate, to start a clinic so that from the stage of a fledging in the profession of medicine he could fly higher up. His father who owns the building moved for eviction of the tenant from the building for the said purpose. Although he won the battle at all tiers the urgently needed eviction is till now eluding him as a mirage. ……..

15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep thought he line for long hears from the start to the ultimate termini, is a malady afflicting the system. During this long interval many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused. ……..

18. We wish to add, as an epilogue, that this case can provide a catalytic agent for the High Court to evolve some concrete scheme for winching to the fore similar long pending matters, lying in torpidity at the bottom of the crammed list of pending cases in the High Courts after passing the initial orders, keeping the operative part of the decree of abeyance. It is worth considering whether a cell can be set up in each of such High Court where the piles of backlog are a stirring problem to pick out such cases to be brought to the notice of the Chief

Justice of the High Court concerned so that he could take appropriate steps in the matter."

In G.C. Kapoor Vs. Nand Kumar Bhasin and others reported in 2001 Supreme Court and Full Bench Rent Cases 541, the apex Court held as under:

> *"Clause (a) sub-section (1) of Section 21 of the Act inter alia provides that the Prescribed Authority may, on an application of the landlord; order eviction of a tenant from the building under tenancy on the grounds mentioned in the said sub-section. Clause (a) is relevant for our purpose which inter alia provides that an application for eviction can be field by the landlord if the building is bona fide required by the landlord for occupation by himself or by any member of the family or by any person for whose benefit the premises is held by him, either for residential purposes or for purposes of any profession, trade or calling. Section 41 of the Act empowers the State Government to make rules to carry out the purposes of the Act. Exercising powers under the said provision, Government have framed a set of rules viz. The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules 1972. Rule 16 is the relevant rule for release of a premises on the ground of personal requirement. Sub Rule (2) lays down that while considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of building let out for the purposes of any business, the prescribed Authority shall also have due regard to the facts stated in the clauses in the sub-rule. We are concerned with clause (d) which runs as follows:-*

"(d) where a son or unmarried or widowed or divorced or judicially separated daughter of a male lineal descendant of the landlord has, after the building was originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration."

9. It is settled position of law that bona fide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattarya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and another, 1999 (4) SCC 1: 1999 SCFBRC 292, this Court while considering the bona fide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bona fide'. It was also held that while deciding this question, Court would look into the broad aspects and if the Court feels any doubt about bona fide requirement, it is for the landlord to clear such doubt.

In the case Mst. Bega Begum and others vs. *Abdul Ahad Khan, AIR 1979 SC 272* It has been observed by Hon'ble Supreme Court that the whole object of the Act is to provide for the control of rents and evictions, for the leasing of buildings etc. It has been observed that onus of proof of this is certainly on the landlord. The Apex Court has observed that both the sides must adduce all relevant evidence before the Court. While deciding aforesaid case their Lordships have relied upon a case *M/S Central Tobacco Co. Vs. Chandra Prakash (1996 NSC 88) to the following effect:*

"In our opinion both sides must adduce all relevant evidence before the court; the landlord must show that other reasonable accommodation was not available to him and the tenant must also adduce evidence to that effect. It is only after sifting such evidence that the Court must form its conclusion on consideration of all the circumstances of the case as to whether grater hardship would be caused by passing the decree than by refusing to pass it."

In the case of Bega Begum 1979 A.I.R. SC page 272 the Apex Court has observed in case of eviction in every case the tenant has to suffer hardship and that cannot be a ground for refusing the release application. The observation of the Apex Court are quoted below:

> *Paragraph 13- " Moreover, section 11(1) (h) of the Act uses the words reasonable requirement which undoubtedly postulate that there must be an element of need as opposed to a mere desire of wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement' should not be artificially extended to its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other States in the*

country. This Court has considered the import of the word 'requirement' and pointed out that it merely connotes that there should be an element of need."

Paragraph – 19 " IN this connection our attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are to likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequences, which flow from a comparative assessment of the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when section 11(1)(H) of the Act was introduced in the Act. This by itself would not be valid ground for refusing the plaintiffs a decree for eviction."

Paragraph 26 " Thus, on a careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is tilted in favour of the plaintiff. The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the plaintiffs far outweigh the prejudice or the inconvenience which will be caused to the defendants.

The High Court has unfortunately to weighed the eviction from that point of view."

Paragraph 28. " For the reason given above, the appeal is allowed. The judgment and decree of the High Court are set aside, and a decree for ejectment of the defendants from the house in dispute is hereby passed against the defendants. In the peculiar circumstances of this case, there will be no order as to costs."

Following the decision of Bega Begum, in the case of Jogendra pal vs. Naval Kishore Behla, 2002 SC & FB, Rent Cases, 388 the Apex Court has held as under:

8. *The need for reasonable interpretation of rent control legislations was emphasized by this Court in Bega Begum v. Abdul Ahad Khan*[6]. *Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In Kewal Singh v. Lajwanti this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of*

landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in Shiv Sarup Gupta v. Dr Mahes Chand Gupta8 the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. *The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords - both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.*

10. *Both the learned counsel for the parties submitted that so far as the expression "his own use" as occurring in Section 13(3)(a)(ii)(a) is concerned, no occasion has hitherto before arisen enabling this Court making an authoritative interpretation and pronouncement. The nearest available decision is Bega Begum6 which has been referred to by the High Court in its impugned judgment and was relied on by Shri Sudhir Chandra, the learned Senior Counsel for the respondent landlord. Section 11(1)(h) of the J&K Houses and Shops Rent Control Act, 1966 provides for the tenant being evicted if the landlord requires the house for "his own occupation". The Court held that the provision is meant for the benefit of the landlord and therefore it must be so construed as to advance the object of the Act. The words "own occupation" contemplate the actual possession of the landlord whether for his own residence or for his business. Furthermore, the provision is wide enough to include the necessity of not only the landlord but also of the persons who are living with him as members of the same family. The words "own occupation" cannot be so narrowly interpreted as to indicate actual physical possession of the landlord personally and nothing more than that.*

16. *A Division Bench of the Patna High Court has opined in Bidhubhusan Sen v. Commr.16 that the expression "his own occupation" as occurring in sub-section (3)(a) of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 does not mean only the occupation of the landlord himself but includes the occupation of other persons who live with the landlord and are economically dependent on him. The requirement of nephew, whose maintenance was the*

responsibility of the landlord was held to be covered by the expression "his own occupation" of the landlord.

17. *In Puspa Lata Debi v. Dinesh Chandra Das*[17] *P.B. Mukharji, J. (as His Lordship then was) observed that the expression "for his own occupation" in Section 11(1)(f) of the W.B. Premises Rent Control (Temporary Provisions) Act, 1948 does not necessarily mean of the particular individual alone but must be widely interpreted to include the family and dependants. The context of social order, the habits and ideas of living and the religious and socio-religious customs of the community to which the individual concerned belongs are relevant determining factors."*

Apex Court in the case Bhagwan Das vs. Smt. Jiley Kaur and others 1991 Supreme Court & Full Bench Rent Cases, 1991 page 182, has held as under:

"Thirdly, it was a case where there was even this additional circumstance that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get it. In Mst. Bega Begum v. Abdul Ahad Khan it was held that in deciding the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable."

Comparative Hardship

In Bahar Ahmad vs. Additional District and Sessions Judge V Fast Track Court, Dehradun and others {2003 (2) ARC 596, after relying upon the judgment of the Apex Court in para 21, 22, 23, 24 and 25, it has been held as under:

"In Smt. Prativa Devi vs. T.V. Krishnan, 1987 SCFBRC 242, it has been held by the Apex court that since the landlord has no legal right to occupy any of the shops, the finding of the Appellate Court, therefore, cannot be interfered. The finding of the Apex Court are given below:

In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant has established her bona fide personal requirement of the demised premises under section 14(1) (e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances."

Similar view has been taken in the case of Smt. Sarla Ahuja vs. United India Insurance Co. Ltd; AIR 1999 SC 103. It has been held by the Apex Court as under:

"When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the

landlord is bona fide. It is often said by courts that it is not of the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

After relying upon the judgment of Rajendra Kumar Gupta Vs. Gopal Krishan and others, A.I.R. 1995 Allahabad 82, it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (Supra) are quoted below:

> *"A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and others, AIR 1995 Alld. 82 : 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein in that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed*

materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fate of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congency to this moving the present application."

Relying upon the judgment of Apex Court Bega Begam Vs. Abdul Ahmad Khan reported in AIR 1979 SC 272, it has been observed in Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77, that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

"As observed by this Court in its decision in the case of Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and other reported in 1984 (1) A.R.C. 387, the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word"……..

In this case where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise inspite of coming to know

that the building in his tenancy is genuinely required by the landlord for satisfying his bona fide need, the question of relative hardships envisaged under the 4th proviso to section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for is established. While it is true that a proviso embraces the filed which is covered by the main provision and the main part cannot be construed in such a manner so as to render proviso redundant yet under the scheme of the Act, the 4th proviso to section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basic intent expressed in the substantive provision which, as is apparent from the perusal of section 21 of the Act is to enquire the availability of the demised premises to the landlord on his successfully establishing the bona fide requirement of the same for the purpose envisaged in that section.

The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the

Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer grater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be tilted in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for outweight the prejudice or the inconvenience which may likely be caused to the tenants."

In Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada 2003 SCFBRC 166 the Apex Court observed as *under:*

"In Piper Vs. Harvery, 1958 (1) All. E.R. 454, the issue as to comparative hardship arose for the consideration of Court of Appeals under the Rent Act, 1957. Lord Denning opined: *"When I look at all the evidence in this case and see the strong case of hardship which the landlord put forward and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and the burden on him to prove) the case is of greater hardship." Hudson, L.J., opined: "The tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he has in fact been in*

occupation of the bungalow and that the has not at the moment any other place to go to. He has not, however, sought to prove anything additional to that by way of hardship, such as unsuccessful attempts to find other accommodation, or indeed, to raise the question of his relative financial incompetent as compared with the landlord." On such state of the case, the Court answered the issue as to comparative hardship against the tenant and ordered his eviction."

Conclusion:

In view of the above, the bona fide need as well as comparative hardship has been fully established by the petitioners for establishing a nursing home. The appellate Court while exercising the jurisdiction under section 22 of the Act No. 13 of 1972 has allowed the appeal by narrowing the scope of the bona fide need as well as comparative hardship. From the facts on the record it will appear that the tenant has already lost his control over the premises in dispute by executing a will. In the above circumstances, the bona fide need as well as the comparative hardship lies in favour of the landlord. This Court, therefore, by exercising the jurisdiction under Article 226 and 227 of the Constitution of India issues a writ of certiorari quashing the order passed by the appellate Court in view of the judgment of the Apex Court in Surya Dev Rai vs. Ram Chander Rai 2003 (2) ARC 385, that where the error is manifest and apparent on the face of the proceedings and the same is also based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby.

Consequently the writ petition is allowed. Order dated 15.3.1995 passed by the 2nd Additional District Judge, Dehradun is set aside and the order of the trial Court is restored. However, the respondents are allowed time up to 31st January 2005 to vacate the premises in dispute, provided the respondent-tenant furnishes an undertaking to this effect before the prescribed authority.

No order as to costs.

November 24, 2004 **(Rajesh Tandon, J.)**

*Dhyani